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November 11, 2020

BY ECF

The Honorable Margo K. Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

*Re: Federal Defenders of New York, Inc. v. Federal Bureau of Prisons, et al., No. 19
Civ. 660 (MKB)*

Dear Judge Brodie:

We write on behalf of the Federal Defenders to provide an update pursuant to the Court's Order dated October 30, 2020.

Holiday and weekend visiting. As addressed in our most recent status letter, *see* Doc. No. 118 at 1, the Federal Defenders have been working with the MDC and the MCC on a plan to ensure appropriate legal access on holidays (and weekends). Specifically, the government had put in place a plan where there would be in-person legal visits at MDC on holidays and weekends (but no calls or VTCs except for emergencies). Last week, the government confirmed that there would be in-person legal visits on Veterans Day. Despite this plan, legal access was severely restricted today. Specifically, at least four CJA attorneys, together with interpreters and a mitigation specialist, were turned away by officers at the facility despite having pre-arranged and scheduled legal visits. They were told that their visits should not have been scheduled on a holiday and that the visits could not happen. Despite the efforts of the Federal Defenders to reach BOP's counsel to address the issue in real-time, the Federal Defenders did not hear back from the BOP in time for the attorneys to visit their clients.¹ This of course led to wasted time and expense (of CJA funds, no less), and, perhaps most importantly, clients who had been told they would see their attorneys yet were left without legal access (and with no ability for the lawyers to explain to them what had happened). As the Court knows, it is exactly such issues that led to the filing of this lawsuit.

Air quality testing. As the Court is aware, the MDC and MCC have engaged in a process to evaluate the air flow in both facilities. Certain of these tests, *i.e.*, those that calculate air flow via a "cubic-feet-per-minute" or "CFM" metric, have been conducted. However, as to the MDC,

¹ One CJA attorney waited at the facility from 9:30 a.m. (the time of her scheduled legal visit) until 11:30 a.m., when she was finally permitted to visit, after the intervention of the Federal Defenders.

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the tests have not been conducted in the SHU visiting areas or the East Building, despite repeated requests. The Federal Defenders have also requested smoke/vapor tests to be conducted at the facilities' visiting areas, which the government has represented will likely be undertaken in the next week or so.

Telephone calls and VTCs. Apart from the issues discussed above regarding holiday and weekend calls and VTCs, the Federal Defenders continue to be concerned about a continued backlog of calls and VTCs at the MDC, particularly on the 5th floor.

Quarantine of defendants after court appearances. As we reported in our latest status letter, *see* Doc. No. 118 at 2, the MDC is placing defendants who appear in court on a quarantine unit following their court appearance and the MDC has proposed a protocol under which defendants will pack up their belongings, including legal materials, so that those will be transported and available to defendants in the quarantine unit upon their return from court. We will continue to confer with the government and mediator about this protocol as it is implemented.

* * *

Thank you for your continued attention to these important issues.

Respectfully submitted,

/s/ Benjamin D. White

Benjamin D. White

cc: Counsel of Record (by ECF)
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